

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2099 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HARGOVANBHAI NATHURAM JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2099 of 1989
MR IS SUPEHIA for Petitioner No. 1-2
MR SIRAJ GORI, AGP.for Respondent No. 1-4
-

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 23/06/2004

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the circular dated 19/8/1987 (Annexure-C) issued by the Entertainment Tax Commissioner, Gujarat State and the notice dated 21/2/1989 (Annexure-E) issued by the Mamlatdar, Deesa.

2 The petitioner is running a "Janta Cinema" called "Apsara Cinema" at village Bhildi in Banaskantha district. As per 1981 census the population of village Bhildi was 4841. As far as the entertainment tax to be levied and collected from Janta Cinemas is concerned, by Government Notification dated 11/12/1979 (Annexure-B) the State Government had granted exemption to Janta Cinemas from the liability to pay entertainment tax to the extent specified in the schedule to the notification. The schedule reads as under :

" SCHEDULE

YEAR EXTENT OF EXEMPTION.

- | | |
|----------------------------------|-------|
| 1 For the first year | Full. |
| 2 For the second year | 75% |
| 3 For the third year | 50% |
| 4 For the forth year | 25% |
| 5 For the firth year and onwards | Nil |

Explanation : For the purpose of this Notification, the 'year' of exemption shall commence from the date from which the licence is granted to the Janta Cinema under the Bombay Cinema Rules, 1954."

The said notification was issued under Section 29 of The Gujarat Entertainments Tax Act, 1977 (hereinafter referred to as 'the Act'), which empowers the State Government to exempt either wholly or partly any entertainment or class of entertainments from payment of tax, subject to such conditions as may be specified therein.

3 Rates of entertainment tax are stipulated in charging section itself i.e. Section 3. Sub-section (1) of Section 6 provides that the State Government may on the application of a proprietor of any entertainment allow the proprietor on such condition as the State Government may impose to compound the tax payable in respect of such entertainment for a fixed sum. Sub-section (2) of Section 6 provides that notwithstanding anything contained in Sub-section (1) of Section 3 every proprietor of cinema in a specified area

shall have an option of payment of tax at the rates specified in Sub-section (5). Sub-section (5) refers to Schedule 'I' to the Act stipulating rates for consolidated tax depending on the class of specified area, population and whether cinema is a touring cinema or other cinemas.

4 According to the petitioner it started running its Janta Cinema at village Bhildi from 18/11/1983 as per licence granted under the Bombay Cinemas Act. The petitioner also made application for payment of compound tax under sub-sections (2) & (3) of Section 6 of the Act. The Collector, Banaskantha at Palanpur by order dated 19.10.1984 (Annexure-A) granted the application and calculated the amount of entertainment tax payable by the petitioner on the Janta Cinema @ 25% of the tax payable by the petitioner after applying exemption granted by notification dated 11.12.1979 and required the petitioner to pay for the first year 25% of the tax after applying exemption. As per calculation made by the Collector ordinary tax @ Rs.1180.80 ps. was payable and 25% of the same was required to be paid by the petitioner every week i.e. @ Rs.295.20 ps. from 18.11.1984. In short the Collector by his order dated 19/10/1984 granted benefit of exemption to the petitioner under Section 29 and also accepted the petitioner's option for paying compounded tax under the provisions of sub-sections (2) & (3) of Section 6. On that basis the entertainment tax was levied and collected from the petitioner by notification dated 11/12/1979 and compounded tax was accordingly calculated for the subsequent years also i.e. 2nd, 3rd and 4th year from the date of licence granted to the petitioner for running Janta Cinema.

5 It appears that subsequently on 19/8/1987 the Entertainment Tax Commissioner issued the impugned circular (Annexure-C) disapproving the practice of granting benefit of compounded tax under Section 6 of the Act after applying exemption under Section 29 of the Act. The Commissioner stated in the said circular that Section 29 and Section 6 of the entertainment tax are separate and independent and that they are not interwoven. According to the Commissioner "Janta Cinema" could be given benefit under Section 9 or benefit under Section 6, but not under both. On the basis of the said circular, the Accountant General, Ahmedabad raised audit query in respect of the petitioner's Janta Cinema and observed that exemption under Section 29 as contained in the notification dated 11/12/1979 is admissible only in respect of the proprietors of Janta Cinemas who are paying tax under Section 3 of the Act and not those who

are paying compounded tax under Section 6 of the Act. Accordingly there was short levy of entertainment tax to the extent of Rs.1,58,595.38 ps. On the basis of the aforesaid objection, Mamlatdar, Deesa issued impugned notice dated 21/2/1989 (Annexure-E) calling upon the petitioner to pay up the aforesaid amount in view of the audit objection raised, failing which coercive recovery would be made. The petitioner thereupon approached this Court.

6 At the hearing of this petition Mr.I.S.Supehia, learned Counsel for the petitioner has submitted that the respondents have made illegal demand of entertainment tax by misinterpreting the provisions of The Gujarat Entertainment Tax Act,1977. The benefits under Sections 6 and 29 are independent benefits available to the Janta Cinemas. They are not at all alternative and they are not in lieu of each other. Secondly, it is submitted that in any view of the matter the Collector granted benefit of the exemption and also accepted option exercised by the petitioner under sub-section (3) of Section 6 as far back as on 19/10/1984. The State Government had not taken the said order in revision at any point of time and when the order of the Collector was never set aside, the Mamlatdar had no jurisdiction or authority to issue the impugned recovery notice dated 21/9/1989. It is further submitted that in any view of the matter, the notice was issued beyond two years from the date on which the Collector had granted petitioner's application and therefore, the impugned notice is in violation of the provisions of sub-section (2) of Section 13 of the Act which stipulates limitation period of two years for revision of any order.

7 On the other hand, Mr.Siraj Gori, learned Assistant Government Pleader has opposed the petition and submitted that when the Entertainment Tax Commissioner had correctly interpreted the provisions of Sections 6 and 29 of the Act and held them to be separate alternative benefits, the Mamlatdar was justified in issuing the recovery notice.

8 Having heard learned Counsel for the parties, we are of the view that there is considerable substance in the alternative contention urged by Mr.Supehia for the petitioner that Collector's order dated 19/10/1984 was not taken in revision by the State Government under Section 13(1) of the Act. Even if the circular dated 19/8/1987 issued by the Entertainment Tax Commissioner were to be treated as an exercise of suo-motu revisional power by the officer nominated by the State Government,

the said circular was issued after two years from the date of the order of the Collector. The individual notice issued by the Mamlatdar to the petitioner on 21/2/1989 was also admittedly issued more than two years after the date on which the Collector had passed the exemption order (19/10/1984).

9 We may also record Mr. Suphia's submission that entertainment tax is to be recovered from the spectators and paid over to the State Government and when the petitioner had charged the entertainment tax from its customers on the basis of the Collector's order granting the benefit of exemption under Section 29 and accepting option for payment on compounded tax under Section 6 of the Act, the petitioner could not be expected to pay tax subsequently at a higher rate by withdrawing the exemption with retrospective effect.

Since we have found that the issuance of notice by Mamlatdar was beyond two years from the date of the Collector's order, we need not express any opinion on this aspect of the matter as the impugned notice is found to be illegal.

10 The petition is accordingly allowed. Rule is made absolute with no order as to costs. The amount deposited by the petitioner pursuant to the interim order of this Court shall be refunded to the petitioner within one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

(M.S.Shah, J)

(D.A.Mehta, J)

m.m.bhatt